

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBER: COD2016-00074

APPELLANT: The ARC of King County
C/o Robert D. Johns/Duana T. Koloušková
Johns Monroe Mitsunaga Koloušková PLLC
11201 SE 8th Street, Suite 120
Bellevue, WA 98004
johns@jmmlaw.com/kolouskova@jmmlaw.com

RESPONDENT: City of Sammamish Department of Community Development
C/o Kim Adams Pratt/Charlotte A. Archer
Kenyon Disend, PLLC
11 Front Street S
Issaquah, WA 98027-3820
kim@kenyondisend.com/charlotte@kenyondisend.com

TYPE OF CASE: Appeal from a formal, written interpretation of Sammamish
Municipal Code 19A.08.190

EXAMINER DECISION: Code Interpretation AFFIRMED

DATE OF DECISION: November 15, 2016

INTRODUCTION ¹

The ARC of King County (ARC) appeals from a formal, written interpretation of Sammamish Municipal Code (SMC) 19A.08.190 issued by the Director of the Sammamish Department of Community Development (the Department) on August 12, 2016. (Exhibits 9 and 8, respectively²)

ARC filed the subject appeal on August 24, 2016. (Exhibit 9) The appeal was timely filed in accordance with SMC 20.10.080(1) and 21A.100.060(2)(b).

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

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The code interpretation relates to a particular parcel of property which is commonly known as Tract 1 in *The Laurels Div. 3*. (Exhibits 7; 9, Appendix A)

The Examiner held an open record hearing on November 10, 2016. Since the only parties of record are ARC and the City, both waived formal notice required by SMC 20.10.180(2). (Statement of counsel)

Pursuant to City of Sammamish Hearing Examiner Rule of Procedure (RoP) 224(c), and with the forbearance of Respondent Department (as to the choice of exhibit numbers), the Examiner entered the following administrative exhibits into the hearing record:

Exhibit 15: Letter, August 30, 2016, Examiner to Principal Parties (scheduling)

Exhibit 16: E-mail, September 7, 2016, Examiner to Principal Parties (setting the hearing date and time)

Pursuant to RoP 224(d) and by agreement of Appellant ARC, Respondent Department pre-filed stipulated Exhibits 1 – 10; Respondent Department also pre-filed Exhibits 11 – 14. Respondent Department provided an index of all those exhibits. Appellant ARC did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted an additional exhibit during the hearing from Respondent Department as follows:

Exhibit 17: Findings/Conclusions/Decision, Trossachs Division No. 18 4-Lot Short Plat, October 9, 2015

Pursuant to RoP 224(e) Appellant ARC pre-filed Exhibits 1001 - 1005 and provided an index of those exhibits. Respondent Department did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

The Deputy City Clerk has the record copy of all exhibit indexes and exhibits.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. On or about March 16, 2016, ARC filed a request for a formal Department Director's Interpretation of SMC 19A.08.190. (Exhibits 8; 9, Appendix A) Section 19A.08.190 reads in full as follows:

19A.08.190 Circumvention of zoning density prohibited.

A legal lot, which has been created through a legally recognized process and is of sufficient land area to be subdivided at the density applicable to the lot, may be

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further subdivided. However, such further division of the lot shall not be permitted if the total number of lots contained within the external boundaries of the original short subdivision, subdivision or binding site plan exceeds the density allowed under current zoning.

ARC specifically wanted to know whether the word “lot” included “tract” and, thus, whether redivision of Tract 1, a “Future Development Tract,” within the recorded subdivision of *The Laurels Div. 3* (*Div. 3*) was subject to the yield limitation within SMC 19A.08.190. (Exhibit 9, Appendix A) On August 12, 2016, the Director ruled that tracts within a recorded subdivision are subject to the yield limitation within SMC 19A.08.190. (Exhibit 8) This appeal followed. (Exhibit 9)

2. The principal parties agree on the historical facts that form the basis for the requested interpretation. In fact, the principal parties jointly filed nine stipulated documents and a Stipulation of Facts. (Exhibits 1 – 10) The Examiner accepts the Stipulation of Facts in Exhibit 10 as verities.
3. Given the agreement on the facts, the Examiner will only briefly summarize them here. *The Laurels* application (which was initially called *Laurelwood*) was filed with King County in or around 1998 before the City was incorporated. Therefore, it was vested to King County development regulations. Under then-applicable King County development regulations the maximum lot yield was calculated to be 117. The *Laurelwood* application had yet to come on for hearing when the City was incorporated in 1999. The application (which by then had been renamed *The Laurels*) came on for hearing before the then City Hearing Examiner in January, 2001, and was given preliminary subdivision approval in February, 2001.³ The approved preliminary plat depicted 117 lots and a number of open space, sensitive area, landscape, private road, and storm water control tracts. The approved preliminary plat contained no Future Development Tracts. The area that eventually became “Future Development Tract” 1 in *Div. 3* was depicted on the approved preliminary plat as 14 lots (Proposed Lots 1 – 14), a short cul-de-sac, and a private road tract. (Exhibits 3; 4; 10)
4. *The Laurels* was recorded in phases or divisions:
 - A. In addition to 54 lots, *The Laurels Div. 1* contained two “Future Development” tracts (Tracts AA and BB) and approximately 15 other tracts identified variously as storm drainage, recreation, landscape, sensitive area, open space, private road, and detention tracts. (Exhibit 5)
 - B. In addition to 17 lots (one of which had been Future Development Tract AA in *Div. 1*), *The Laurels Div. 2* contained two “Future Development” tracts (Tracts 1 and 2) and two other tracts, a recreation and a landscape tract. (Exhibit 6)

³ Two versions of the preliminary plat are contained at the end of Exhibit 4: Alternative One and Alternative Two. The then Examiner’s Decision specifically approved “Alternative # 2”. (Exhibit 4, p. 6)

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- C. “Future Development Tracts” 1 and 2 in *Div. 2* became *The Laurels Div. 3*. In addition to 36 lots, *Div. 3* contained one “Future Development” tract (Tract 1) and approximately eight other tracts identified variously as landscape/recreation, sensitive area, open space, and private road tracts. (Exhibit 7)
- D. *Div. 1* Future Development Tract BB apparently was never developed and was eventually conveyed by the developer to the homeowners association. (Statement of counsel)

The three recorded divisions of *The Laurels* together contain 107 lots, two “Future Development” tracts (Tracts 1 and BB), and the various special tracts listed above. (Exhibits 5 - 7)

- 5. The last division of *The Laurels* to be recorded was *Div. 3* which was recorded on October 10, 2003. (Exhibits 5 – 7) Because more than 10 years has elapsed since recordation of *The Laurels*, any right to redivide Tract 1 vested under RCW 58.17.170(2)(b)⁴ has expired.
- 6. ARC, “a non-profit organization which provides services to individuals and families affected by intellectual and developmental disabilities”, is the current owner of *Div. 3* Tract 1. (Exhibit 10; quote from Exhibit 9, Appeal Statement, p. 1, ll. 16 and 17) ARC desires to sell Tract 1 to a developer with the objective of dividing the 1.60 acre⁵ tract into a number of single-family residential lots. ARC estimates that Tract 1 may be able to be divided into four or five residential lots under current City regulations if SMC 19A.08.190 does not apply. (Exhibit 9, Appeal Statement, p. 3, ll. 1 – 10)
- 7. ARC’s position is that when SMC 19A.08.190 uses the word “lot,” it means exactly that and no more. Thus, ARC believes that the yield restriction in SMC 19A.08.190 does not apply to *Div. 3* Tract 1 since it is a “tract” and not a “lot.” (Exhibits 9; 1001; argument of counsel)
- 8. The City’s position, as reflected in the Director’s Interpretation and in testimony at hearing, is that the intent of SMC 19A.08.190 is to prevent residential densities in excess of those allowed by current City regulations. To implement that intent, the City argues that the yield restriction in SMC 19A.08.190 must be read to apply to tracts such as Future Development Tract 1 in *Div. 3* as well as to “lots.” (Exhibits 8; 14; testimony; argument of counsel)
- 9. City regulations use a different formula to determine maximum yield for subdivisions than did King County regulations in 1998 (net v. gross density formulas). Under the City’s current net density regulations, the maximum lot yield for the entire site of *The Laurels* would be 88. Therefore, the 107 lots in the existing development already exceed the yield that would be allowed under current City

⁴ “Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007.”

⁵ ARC referred to Tract 1 in its appeal (Exhibit 9) and in argument during the hearing as containing over two acres. The recorded plat (Exhibit 7) indicates the actual area of Tract 1 is 1.60 acres.

regulations. Thus, the City's position is that SMC 19A.08.190 acts to prohibit any further redivision of any parcel within *The Laurels*, including *Div. 3 Tract 1*. (Exhibit 8)

10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁶

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

The Department's Director is authorized to issue formal, written code interpretations. [SMC 21A.05.085, 21A.05.090, and 21A.100.055] An appeal from the Director's code interpretation requires an open record hearing before the Examiner. The Examiner makes a final decision on the appeal which is subject to the right of reconsideration and appeal to Superior Court. [Chapter 21A.05 SMC and SMC 20.10.240, 20.10.250, 20.10.260, and 21A.100.060] The Examiner "may affirm, modify, or reverse the decision of the [D]irector." [SMC 21A.100.060(4)]

Review Criteria

The decision criteria which "may" be applied in making a formal code interpretation are set forth at SMC 21A.05.095(1):

- (a) The purpose and intent statements of the chapters in question;
- (b) Consistency with other regulatory requirements governing the same or a similar situation;
- (c) The legislative direction of the City council, if any, provided with the adoption [of] the code sections in question;
- (d) The policy direction provided by the Sammamish Comprehensive Plan, or other adopted policy documents, as amended;
- (e) Relevant judicial actions related to the interpretation;
- (f) Expected result or effect of the interpretation; and
- (g) Previous implementation of the regulatory requirements governing the situation.

Standard of Review

The standard of review is preponderance of the evidence. The appellant has the burden of proof. [RoP 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

⁶ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

CONCLUSIONS OF LAW

1. The fundamental issue before the Examiner in a formal, written code interpretation appeal is whether the Director's interpretation accurately represents the code language as adopted by the City Council. In other words, does the SMC provision at issue really say what the Director says it says? Where the interpretation relates to a particular parcel of property, a secondary issue is how the property is affected by the code as interpreted.
2. ARC's appeal statement lists 6 "Grounds for Appeal." (Exhibit 9, pp. 3 and 4) But the basic question presented in this appeal can be simply stated: Are "tracts" in a recorded subdivision subject to the yield restrictions of SMC 19A.08.190? The Examiner will address that question first and then turn to the six "Grounds" listed in the appeal.
3. This appeal is, as both principal parties acknowledged during the hearing, purely a question of code interpretation. How the code affects ARC's Tract 1 in *Div. 3* is dictated by what the code means. The Examiner agrees with both principal parties that City ordinances are subject to the same rules of interpretation and construction as apply to statutes. [*Tahoma Audubon Soc. v. Park Junction Partners*, 128 Wn. App. 671, 116 P.3d 1046 (2005); *Neighbors v. King County*, 88 Wn. App. 773, 778, 946 P.2d 1188 (1997)] But having agreed on that, the question is Which rules of statutory construction/interpretation apply?

A cynic might observe that there seems to be a rule of statutory construction/interpretation for every occasion. Or even that rules of statutory construction/interpretation sometimes seem to be selected to buttress a chosen course of action. The Examiner elects to first try to apply the rule of common sense: Let's try to figure out what the City Council was trying to do and then determine if the adopted language reasonably accomplishes that purpose.

4. The record in this proceeding contains no Council-level legislative history addressing the adoption of SMC 19A.08.190 in 2010. That code section was part of a complete re-write of the City's subdivision regulations: Title 19 SMC was repealed and replaced by Title 19A. [Official notice, Ordinance No. O2010-284] The Examiner has looked at that Ordinance. It contains the usual recitals laying out the process that was followed in its enactment, but it has no substantive findings incorporated or attached. In particular, no written findings regarding SMC 19A.08.190 are to be found in the ordinance.

The record of this proceeding does contain an excerpt from the Planning Commission's consideration of Title 19A SMC in 2010. The excerpt contains a brief exchange between a planning commissioner and two City staffers. The gist of the exchange is that the staffers were trying to explain to the commissioner what SMC 19A.08.190 was intended to do. (Exhibit 13) It is clear to this Examiner that the Planning Commission was told that the intent of SMC 19A.08.190 was to

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prevent redivision within a subdivision that would result in a lot yield exceeding that allowed under current zoning. (It must be remembered that the City code does not regulate density through minimum lot sizes, it regulates density solely through lot yield restrictions.) The discussion begins with one of the staffers reading the proposed section. There is nothing in the excerpt in this record to suggest that the Planning Commission recommended that the City Council change any of that wording. (Had subsequent discussion during that Planning Commission meeting involved such a recommendation, the Examiner is confident that Appellant ARC's counsel would have brought that fact to the Examiner's attention.)

5. It is clear to the Examiner that the intent of SMC 19A.08.190 is to prevent redivision within a subdivision that would result in a lot yield exceeding that allowed under current zoning. (One of the rules of statutory construction/interpretation holds that a statute should be interpreted to implement the intent of the legislative body that enacted it.)
6. ARC argued that the City could solve any problems with SMC 19A.08.190 by simply designating "future development" parcels in plats as "lots" rather than as "tracts." But that argument completely ignores that fact that for some unknown number of prior years (certainly going back at least to 1999, the year the City became incorporated) plats have been recorded containing "Future Development Tracts." Those tracts cannot now magically be re-labeled as "Future Development Lots." And under ARC's logic, every plat with a "Future Development Tract" could see redivision of such a tract (or tracts) regardless of the overall density that would result within the original subdivision. That would most certainly not fulfill the City Council's intent.
7. There are tracts and there are tracts within subdivisions. *The Laurels* presently contains two "Future Development Tracts" (Tract BB in *Div. 1* and Tract 1 in *Div. 3*). *The Laurels* also contains numerous open space, sensitive areas, landscape, stormwater control, etc. tracts. Each of those latter tracts is restricted by text on the face of the plat to serve a specific purpose. Because of those restrictions, those tracts are different from "Future Development Tracts." By the very name, "Future Development Tracts" are reserved for redivision into future lots. If SMC 19A.08.190 does not apply to "Future Development Tracts," then the yield restrictions in SMC 19A.08.190 would be completely thwarted. (Another rule of statutory construction/interpretation holds that interpretations which lead to absurd results should be avoided.)
8. The Examiner concludes that SMC 19A.08.190 was intended to limit redivision within a recorded subdivision to a yield within the bounds of the original subdivision that does not exceed that which would be allowed under current zoning. If a subdivision approved under prior regulations currently has a yield equal to or greater than that allowed by current regulations, then no further redivision of any parcel within that subdivision is allowed, regardless of whether that parcel is called a "lot" or a "Future Development Tract" or something else. Any other interpretation would permit the absurd result of "Future Development Lots" being restricted while "Future Development Tracts" would not be restricted, thus resulting in potential yields far in excess of current regulations.

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9. The Examiner would augment the Director's Interpretation only by stating that SMC 19A.08.190 applies both to lots and to tracts established for the purpose of allowing future development. Tracts established for other specific purposes (sensitive area protection, open space provision, landscaping, private roads, storm water control facilities) are not eligible for redivision in the first place unless a Plat Alteration were requested. In that case, SMC 19A.08.190 would again apply and the total yield within the original subdivision based upon current regulations would limit the number of additional lots, if any, that could be achieved through a Plat Alteration.
10. With respect to *The Laurels*, the three divisions as recorded contain 107 single-family residential lots. The City's current net yield regulations would only allow *The Laurels* site to be divided into 88 single-family lots. The existing yield already exceeds the maximum allowed under current City regulations. Therefore, SMC 19A.08.190 serves to bar any further redivision of any parcel within *The Laurels*.
11. Had an application to redivide *Div. 3 Tract 1* been filed with the City before October 10, 2013, the underlying plat would have still been protected by RCW 58.17.170(2)(b) and the King County density calculation formula would have still applied: Ten lots of the maximum 117 would have still been available. But we are now some three years after the RCW 58.17.170(2)(b) vesting expired. That possibility no longer exists.

The Examiner is not unmindful of the ownership circumstances which essentially prevented an earlier application to redivide *Div. 3 Tract 1*. Nor is the Examiner unmindful of the charitable purposes to which ARC could put the proceeds from a sale of *Div. 3 Tract 1*. (Exhibits 1 – 10; 1001; statement of counsel) But the Examiner cannot consider any "hardship" that ARC may experience as a result of the Director's Interpretation: The City is required to base its land use decisions upon duly adopted laws and ordinances, and may not consider equitable defenses. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)]

12. As to the six "Grounds for Appeal" in the appeal:
 - A. Ground 1. The Examiner recognizes that the SMC seemingly uses "lot" and "tract" in various ways in various places. Some of the differences may be accounted for by differences in time period in which the provisions were enacted. Nevertheless, it is clear that in SMC 19A.08.190 the intent is that "lot" includes "Future Development Tracts."
 - B. Ground 2. Without passing any judgment whatsoever on the merits of this Ground, asserted inconsistency in application raises an equitable defense which the Examiner cannot consider. [*Chaussee, supra*]
 - C. Ground 3. The Director's interpretation is not inconsistent with the recorded plat of *The Laurels*. Tract 1 in *Div. 3* was available as a "Future Development Tract" for so long as the plat remained vested to the King County regulations under which it was filed and originally

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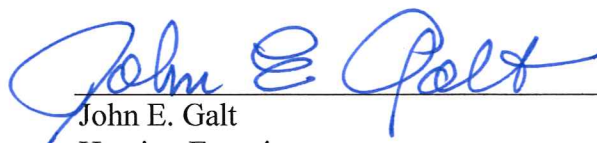
approved. Once that vesting expired, which it did some three years ago, any use of the "Future Development Tract" became subject to current City regulations, including the limitations of SMC 19A.08.190.

- D. Ground 4. The bulk of this Decision has already addressed this Ground.
 - E. Ground 5. There is nothing arbitrary or capricious about the Director's Interpretation. The Interpretation correctly considered the City Council's clear intent in the enactment of SMC 19A.08.190.
 - F. Ground 6. The principal parties agreed that the Examiner has no jurisdiction to consider constitutional issues that may be raised by SMC 19A.08.190 or the Director's interpretation thereof. The Examiner concurs.
13. In the final analysis, the Examiner finds Respondent City's arguments, augmented by the preceding analysis, more persuasive than ARC's counter arguments.
14. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **AFFIRMS** the Director's formal, written interpretation of SMC 19A.08.190.

Decision issued November 15, 2016.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁷

Bob Johns, unsworn counsel
Kim Adams Pratt, unsworn counsel

Jeff Thomas
Charlotte Archer, unsworn counsel

⁷ The official Parties of Record register is maintained by the City's Hearing Clerk.

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NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act.. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."
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